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Appeal Brief - Patents	10/650,008	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE SEP 05 2006  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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In re application of: David B. DWYER                      Group Art Unit: 3663  
Serial No.:                      10/650,008                      Examiner: M. Luu  
Filed:                      August 26, 2003                      Confirmation No.: 6065

For: INTEGRATED FLIGHT MANAGEMENT AND TEXTUAL AIRCRAFT  
TRAFFIC CONTROL DISPLAY SYSTEM AND METHOD

Attorney Docket No.: H0004368-5507

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**SUBMISSION OF APPELLANT APPEAL BRIEF**

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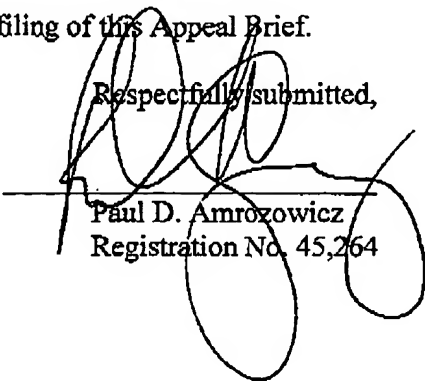
Sir:

Appellant hereby submits its Appeal Brief in response to the final rejection of the  
subject patent application.

The Commissioner is hereby authorized to charge Ingrassia, Fisher & Lorenz,  
Deposit Account No. 50-2091, \$500 for the filing of this Appeal Brief.

Dated September 5, 2006

Respectfully submitted,

  
Paul D. Amrozowicz  
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Ingrassia, Fisher & Lorenz  
Customer No. 29,906

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re application of: David B. DWYER

Group Art Unit: 3663

Serial No.: 10/650,008

Examiner: M. Luu

15 Filed: August 26, 2003

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For: INTEGRATED FLIGHT MANAGEMENT AND TEXTUAL AIRCRAFT  
TRAFFIC CONTROL DISPLAY SYSTEM AND METHOD

20 Docket No.: H0004368-5507

Customer No.: 000128

25

**APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37**

30

Appellant hereby submits its Appeal Brief in response to the final rejection of the subject  
patent application.

09/06/2006 RFEKADU1 00000038 10650008

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# TABLE OF CONTENTS

	I.	INTRODUCTION.....	1
	II.	REAL PARTY IN INTEREST .....	1
	III.	RELATED APPEALS AND INTERFERENCES .....	1
5	IV.	STATUS OF CLAIMS .....	1
	V.	STATUS OF AMENDMENTS .....	1
	VI.	SUMMARY OF CLAIMED SUBJECT MATTER.....	2
	VII.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....	2
	VIII.	ARGUMENTS.....	3
10	IX.	CONCLUSION OF ARGUMENTS.....	7
	X.	CLAIMS APPENDIX.....	8
	XI.	EVIDENCE APPENDIX.....	11
	XII.	RELATED PROCEEDINGS APPENDIX.....	12

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I. Introduction

This is an Appeal Brief under 37 C.F.R. § 41.37 appealing the final rejection of the Examiner dated June 2, 2006. Each of the topics required by 37 C.F.R. § 41.37 is presented in this Brief and is labeled appropriately.

5

II. Real Party in Interest

Honeywell International, Inc. ("Honeywell") is the real party in interest of the present application. An assignment of all rights in the present application to Honeywell was executed by the inventors and recorded by the U.S. Patent and Trademark Office at Reel 014481, Frame 0296.

10

III. Related Appeals and Interferences

There are no appeals or interferences related to the present application of which Appellant is aware.

15

IV. Status of Claims

Claims 1-12, which are presented in the Claims Appendix, stand finally rejected.

Accordingly, the Appellant hereby appeals the final rejection of Claims 1-12.

20

V. Status of Amendments

In response to a non-final Office action dated December 21, 2005, which rejected Claims 1-12, Appellant filed a Response Pursuant to 37 C.F.F. § 1.111, canceling Claims 13-32 without prejudice or disclaimer, as a result of a previously imposed restriction requirement, and requesting reconsideration of the rejections set for in the Office action. In response to this request, the Examiner issued a final Office action, dated June 2, 2006, which reiterated the rejections set for in the previous non-final Office action. In response, Appellants filed a Notice of Appeal.

25

30

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The present invention defined by independent Claim 1, which is the sole independent claim on appeal, relates to an aircraft flight management display system for displaying air traffic control clearance messages transmitted to an aircraft (pg. 1, ll. 7-9; pg. 2, l. 34 through pg. 3, l. 1; FIGS. 1-7). The system (100) includes a processor (104) and a display (108) (pg. 4, ll. 22-24; FIG. 1). The processor (104) is adapted to receive data representative of a current aircraft flight plan (pg. 3, ll. 7-8; pg. 5, ll. 8-10; FIGS. 1, 3). The processor (104) is also adapted to receive one or more textual clearance message signals that are representative of the air traffic control clearance messages (pg. 3, ll. 8-9; pg. 5, ll. 5-6; FIGS. 1, 3). The processor (104) is operable, in response to receiving the data and one or more signals, to supply one or more flight plan display commands and one or more clearance message display commands (pg. 5, ll. 8-10; pg. 9, l. 4-13; FIGS. 3-7). The display (108) is coupled to receive the flight plan display commands and the clearance message display commands and is operable, in response thereto, to substantially simultaneously display one or more images representative of the current aircraft flight plan and the textual air traffic clearance messages (pg. 3, ll. 11-15; pg. 5, ll. 2-10; pg. 6, l. 32 through pg. 7, l. 2; pg. 7, ll. 12-14 and 25-27; pg. 8, ll. 5-7; pg. 9, ll. 8-13; FIGS. 1-7).

**VII. Grounds of Rejection to be Reviewed on Appeal**

The single ground of rejection to be reviewed in this appeal is as follows:

1. Claims 1-12 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 6,181,987 (Deker et al.).

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VIII. ArgumentsI. CLAIMS 1-12 ARE NOT ANTICIPATED BY DEKER ET AL. UNDER 35  
U.S.C. § 102(b)

5 In the final Office action, Claims 1-12 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by Deker et al. As will be explained in more detail herein below, this rejection is not tenable at least because all of the elements recited in independent Claim 1 are not found in the cited reference.

A. Deker et al.

10 Deker et al. relates to a system and method for assisting aircraft pilots in defining a new flight plan to meet a new situation that may have resulted from a particular event. The disclosed system includes a computer (2), a mass storage unit (3), and a display device (4). The mass  
15 storage unit (3) stores, among other data, a set of rules associating events that require flight plan modification with one or more corrective actions to be applied to the current flight plan (col. 3, ll. 42-45). The events that require flight plan modification include weather conditions at the destination airport that may prohibit a safe landing, the destination airport is congested or closed, the destination airport infrastructure is inadequate, air traffic control at the destination airport is  
20 out of service or congested, an aircraft malfunction that affects flying range has been detected, and a problem has arisen concerning the passengers (col. 4, ll. 11-25). If the computer (2) determines one of these events has occurred, it determines, based on the set of rules stored in the mass storage unit (3), various modifications to the current flight plan (col. 5, ll. 28-33).

25 In addition to the above, the user can request explanations about each of the various flight plan modifications by pressing an EXPLAIN key. The information available for each explanation is displayed in a textual window (28) of the display device (4), and includes information regarding landing conditions, such as the condition of the runways, predictions and landing performance characteristics, operational limits, minimum values of weather conditions, and current and foreseeable weather conditions, and information regarding regulatory  
30 constraints, such as, the permitted category of approach, the landing weight of the aircraft, and

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the landing distance. This information is updated automatically, via a data link 15 (col. 6, ll. 27-65).

B. Independent Claim 1

5 Independent Claim 1 relates to an aircraft flight management display system for displaying air traffic control clearance messages transmitted to an aircraft. The system includes a processor and a display, and recites, *inter alia*, that the processor is "adapted to receive (i) data representative of a current aircraft flight plan and (ii) one or more textual clearance message signals representative of the air traffic control clearance messages and operable, in response  
10 thereto, to supply one or more flight plan display commands and one or more clearance message display commands."

C. Analysis

15 It is well settled that a single prior art reference can anticipate a claim only if each and every element recited in the claim is disclosed, either expressly or inherently, in the cited reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be disclosed with the same level of detail as the claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). While not a so-called *ipsissimis verbis* test, the elements disclosed in a  
20 cited reference must be arranged as recited in the claim. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Appellants submit that the Examiner has not met his burden in establishing a *prima facie* case of anticipation, since the reference the Examiner relies does not disclose, either expressly or inherently, each and every element recited in at least independent Claim 1. Additionally, and as  
25 will firstly be explained, the Examiner erroneously dismisses explicit recitations in at least independent Claim 1, using faulty, unsound interpretations of both legal precedent and the Manual for Patent Examining Procedure (M.P.E.P.).

30



1. The Claims Do Not Merely Recite Statements of Intended Use

In support of the anticipation rejection in the final Office action, the Examiner alleges that the claims include statements of intended use or field of use, such as “operable to,” adapted to,” and “capable of.” The Office action further alleges that these clauses are essentially method limitations or statements of intended or desired use, and are therefore accorded no patentable weight. Final Office action at 2, 7. The Examiner cites M.P.E.P. §§ 2114 and 2115, and various legal precedent as providing support for this allegation. *Id.* at 2-3, 7-8. However, as will now be explained, Appellant submits that these sections of the M.P.E.P. and the cited legal precedent must be read in concert with other case law regarding functional language recited in claims.

Appellant further submits that the claims do not include mere statements of intended or desired use, and that the claims actually do recite structure that is distinguishable from the prior art.

First of all, it is well-settled that “[t]here is nothing inherently wrong with defining some part of an invention in functional terms.” M.P.E.P. § 2173.05(g). Moreover, a claim is not improper merely because it includes functional language. *In re Swinehart*, 439 F.2d 210, 169

USPQ 226 (CCPA 1971). Functional terms that are included within claims cannot be summarily ignored or dismissed. Instead, the M.P.E.P. dictates that functional terms, just like all other claim terms, must be evaluated and considered for what the terms convey to a person of ordinary skill in the pertinent art, and in the context in which such terms are used. M.P.E.P. § 2173.05(g). Appellant submits that the Examiner has not followed these guidelines, and has improperly dismissed all claim language that may remotely reflect functional language.

Nonetheless, Appellant submits that the pending claims do not include mere recitations of intended or desired use. For example, although the independent Claim 1 does recite a processor that is “adapted to receive (i) data representative of a current aircraft flight plan and (ii) one or more textual clearance message signals representative of the air traffic control clearance messages,” it further recites that the processor is “operable, in response [to the received data and textual clearance message signals], to supply one or more flight plan display commands and one or more clearance message display commands.” Hence, it is clear that independent Claim 1 recites a uniquely configured processor, and not just any off-the-shelf processor. Specifically, the processor recited in independent Claim 1 is one that, in response to receiving data and textual clearance message signals, supplies one or more flight plan display commands and one or more

clearance messages display commands.

As may be readily apparent to one of less than ordinary skill, let alone an ordinarily skilled artisan, one cannot simply take any particular processor, supply it with the recited data and signals, and expect it to supply flight plan display commands and clearance message display  
5 commands, without specifically configuring the processor to do so. If this were not so, no invention that uses a processor could ever be patentable, as its unique configuration is, at least in the flawed opinion of the instant Examiner, merely functional language.

The Examiner, in the final Office action, attempts to refute the rather clear reasoning made in the preceding paragraphs by merely stating that “the examiner respectfully disagrees,”  
10 and stating, without citing any legal precedent, that “[i]t has been held that the recitation that an element is ‘adapted to’ perform or is ‘capable of’ performing a function is not a positive limitation, but only requires the ability to so perform.” See final Office action at 7.

Interestingly, the Examiner clearly, albeit correctly, does not state that a recitation that a processor is “operable to” and more specifically, “operable, in response to receiving data and/or  
15 signals, to” perform a stated function is not a positive limitation. The reason for this rather glaring omission is, of course, because no precedent exists for such a proposition.

From the preceding, Appellant submits that it is rather clear that the Examiner erroneously fails to accord patentable weight to rather explicit recitations of structure in at least independent Claim 1; namely, a processor that is operable to supply one or more flight plan  
20 display commands and one or more clearance message display commands in response to receiving flight plan data and textual clearance message signals. Given this, and as will now be explained, the cited reference does not anticipate at least independent Claim 1, and thus none of the claims that depend therefrom.

25        2.        Deker et al. Does Not Disclose Every Element Recited in Independent Claim 1

In the final Office action, the Examiner alleges that the computer (2) disclosed in Deker et al. corresponds to the processor recited in independent Claim 1. Appellant, however, submits that Deker et al. is completely devoid of any teaching or suggestion that the disclosed computer (2) receives data representative of a current aircraft flight plan, and one or more textual clearance  
30 message signals representative of the air traffic control clearance messages, and in response to

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these data and signals, supplies flight plan display commands and textual clearance message display commands. The Office action alleges that because the textual window (28) displays textual information related to landing conditions or regulatory constraints, such as category of approach, "it is inherent that the processor (computer 2) can also supply . . . clearance message display commands." See final Office action at 3. It is submitted, however, that textual information data related to landing conditions and/or regulatory constraint data are not even remotely similar to textual clearance message signals representative of air traffic control clearance messages.

In addition to the above, and as was previously noted, even if textual clearance message signals representative of air traffic control clearance messages were transmitted to the system disclosed Deker et al., neither the computer (2) nor any other portion of the system is disclosed as being operable, in response to such signals, to supply one or more clearance message display commands. Indeed, there is no disclosure whatsoever in Deker et al. that teaches that if one were to purposely transmit traffic control clearance messages directly toward the disclosed computer system that it would (or even could) supply one or more flight plan display commands and one or more clearance message display commands. Hence, Appellant submits that it is abundantly clear that the computer system disclosed in Deker et al. is not operable to supply these commands.

In view of the foregoing, Appellant requests reversal of the above-noted § 102 rejections.

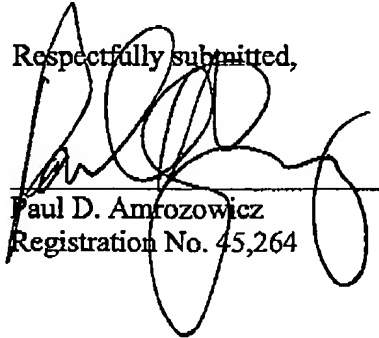
#### IX. CONCLUSION OF ARGUMENTS

In view of the foregoing, Appellant submits that the final rejection of Claims 1-12 is improper and should not be sustained. Therefore, a reversal of the rejections in the final Office action dated June 2, 2006, is respectfully requested.

30 Dated

9/5/06

Respectfully submitted,

  
Paul D. Amrozowicz  
Registration No. 45,264

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X. CLAIMS APPENDIX

Claims on Appeal

5           1.    An aircraft flight management display system for displaying air traffic control clearance messages transmitted to an aircraft, the system comprising:

              a processor adapted to receive (i) data representative of a current aircraft flight plan and  
              (ii) one or more textual clearance message signals representative of the air traffic control  
clearance messages and operable, in response thereto, to supply one or more flight plan display  
10   commands and one or more clearance message display commands; and

              a display coupled to receive the flight plan display commands and the clearance  
message display commands and operable, in response thereto, to substantially simultaneously  
display (i) one or more images representative of the current aircraft flight plan and (ii) the textual  
air traffic clearance messages.

15

              2.    The system of Claim 1, wherein the display is further operable, in response to the  
clearance message display commands, to display one or more images representative of a  
modified aircraft flight plan, when the textual air traffic clearance message indicates the current  
aircraft flight plan should be modified.

20

              3.    The system of Claim 1, further comprising:

              a user interface configured to receive user input and operable, in response thereto, to  
supply one or more clearance message user response signals,

              wherein the processor is further coupled to receive the clearance message user response  
25   signals and is further operable, in response thereto, to transmit a response to the displayed textual  
air traffic control message.

30

4. The system of Claim 3, wherein:

the user interface is further operable, in response to user input, to supply one or more flight plan modification signals; and

the processor is further coupled to receive the flight plan modification signals and is further operable, in response thereto, to transmit a textual signal representative of the flight plan modification.

5. The system of Claim 4, wherein:

the processor is further operable, in response to the flight plan modification signals, to supply flight plan modification display commands; and

the display is further operable, in response to the flight plan modification display commands, to display one or more images representative of the modified flight plan.

6. The system of Claim 5, wherein the display is further operable to substantially simultaneously display the images representative of the current aircraft flight plan and the images representative of the modified flight plan.

7. The system of Claim 3, wherein the processor is further operable, in response to the user input command signals, to automatically update the current flight plan consistent with the transmitted response to the displayed air traffic control message.

8. The system of Claim 3, wherein the display is further operable, in response to the display commands, to selectively display a user interface field that allows a user to appropriately respond to the displayed textual air traffic control message via the user interface.

9. The system of Claim 1, further comprising:

a user interface configured to receive user input and operable, in response thereto, to supply one or more flight plan modification command signals,

wherein the processor is further coupled to receive the flight plan modification  
5 command signals and is further operable, in response thereto, to generate one or more textual clearance messages, and to supply one or more modified flight plan display commands and one or more clearance message display commands, and

wherein the display is further coupled to receive the flight plan modification display  
10 commands and the clearance message display commands and is further operable, in response thereto, to substantially simultaneously display (i) one or more images representative of a modified aircraft flight plan and (ii) the textual clearance messages.

10. The system of Claim 1, wherein the data representative of aircraft flight plan includes navigation data, and wherein the system further comprises:

15 one or more navigation databases in operable communication with the processor, each navigation database having navigation data stored therein,

wherein the processor is further configured to selectively retrieve navigation data from each navigation database.

20 11. The system of Claim 1, wherein:

the processor is further coupled to receive avionics data and is further operable, in response thereto, to supply one or more avionics data display commands; and

the display is further coupled to receive the avionics data display commands and is further operable, in response thereto, to display one or more images representative of the  
25 avionics data substantially simultaneously with the current aircraft flight plan.

12. The system of Claim 1, wherein one of the images representative of the current aircraft flight plan is a lateral map image.

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**XI. EVIDENCE APPENDIX**

No evidence pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 has been entered by the Examiner or relied upon by Appellant in the instant appeal beyond that which is already contained in the as-filed application, as is delineated in the Arguments section of this Brief.

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**XII. RELATED PROCEEDINGS APPENDIX**

As there are no related appeals and interferences, there are also no decisions rendered by a court or the Board of Patent Appeals and Interferences that are related to the instant appeal.